

Chapter 7.06 RIGHT-OF-WAY MANAGEMENT REGULATIONS

7.06.010 Title.

This chapter is known as and may be cited as the “Right-of-Way Management Ordinance” of the City of Santa Monica. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.020 Definitions.

For the purpose of this chapter, the following words or phrases are defined below:

(a) **Applicant.** Any utility, including any utility’s authorized agent, requesting permission to install any facility or to make any excavation in the PROW on behalf of utility.

(b) **Day.** One business day.

(c) **Department.** Environmental and Public Works Management Department of the City of Santa Monica.

(d) **Director.** The Director of the Environmental and Public Works Management Department or designee.

(e) **Emergency.** A condition that poses an imminent threat to life or property, including any repairs necessary to restore service that is currently disrupted.

(f) **Excavation.** Any trenching, digging, boring, tunneling, or jacking of conduit or pipes or placement of a facility or any other structure in the PROW by or for utilities.

(g) **Facility.** Any property in the PROW used to provide service by any utility.

(h) **Hazardous Material.** Any substance of any kind including, waste, gas or other material which, because of its quantity, concentration, or physical or chemical properties or characteristics, is deemed by any Federal, State, County, or

local law or authority to pose a present or potential hazard to health or safety or to the environment.

(i) **Permittee.** Any utility that has obtained permission through the issuance of a permit from the department to make any excavation or otherwise locate, install or place facilities in the PROW.

(j) **PROW (Public Right-of-Way).** The area on, below, or above a City-owned or controlled street or alley public right-of-way and the sidewalk and/or parkway adjacent thereto.

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(k) **Utility.** A company which is certified by the California Public Utilities Commission or the Federal Communications Commission to provide or install any facilities for the delivery or transmission of telecommunications, wireless, electricity, oil, gas, internet or other similar data transfer service, including any utility owned or operated by another city, county, or other governmental agency to the extent allowed by law. For the purpose of this Chapter, utility shall also include companies providing cable television services. City-owned utilities and facilities installed in the PROW are exempt from the provisions of this Chapter.

(l) **Wireless.** Personal or commercial mobile tele-communication services certified by the California Public Utilities Commission and common carrier wireless exchange access services utilizing radiofrequency signals emitted from any facility in the PROW.

(m) **Work.** Includes all labor, materials, equipment, services, and all other things necessary for the utility to install a facility in the PROW, including without limitation any changes requested by the City, in accordance with this Chapter and all applicable laws and regulations. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.030 Purpose and findings.

The City Council finds and determines that it is in the interest of the City of Santa Monica to establish regulations to manage the installation of facilities in or along the PROW. The City Council finds that the PROW within the City is crowded with an ever increasing number of pedestrians and vehicles and both the surface and the subsurface of the PROW has experienced a proliferation in competing uses, including, without limitation, water, sewer, storm drains, gas, electric, telephone, telecommunications, and cable lines that crisscross the PROW. The large number and variety of these uses make management of the PROW necessary in order to preserve and to maintain the public health and welfare. Accordingly, this PROW Management Ordinance is adopted:

- (1) To ensure public health, safety, and welfare.
- (2) To manage the public right-of-way as to the time, place, and manner in which it is accessed.
 - (A) To minimize the impacts of installations in crowded PROWS.
 - (B) To minimize the impacts of installations in areas of heavy traffic.
- (3) To preserve view corridors, to discourage visual blight and clutter and to encourage aesthetic placement of facilities.
- (4) To accommodate public and City use of the PROW, so as to permit maintenance of facilities, and to minimize disruption to vehicular traffic and pedestrian flow; and on-street parking.
- (5) To minimize unnecessary disruption of the PROW by coordinating installations so as to effectively manage use of the PROW.
- (6) To ensure the structural integrity, reliability, performance, safety, quality, ease of maintenance, and aesthetic integrity of the PROW.
- (7) To ensure that similarly situated PROW users are treated in a competitively neutral and non-discriminatory manner while complying with applicable codes.
- (8) To ensure compliance with all Federal, State, County, and local laws.
- (9) To prevent hazardous conditions along the PROW.
- (10) To manage the long-term use of the PROW. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.040 Applicability.

This Chapter shall apply to any facility installed or otherwise placed in the PROW on or after the effective date of the ordinance codified in this Chapter. Facilities constructed prior to the effective date of said ordinance shall be brought into compliance with this Chapter when that facility is reconstructed, modified or replaced. This Chapter shall also apply to any facility previously located, installed or otherwise placed in the PROW without undergoing review and approval by the Director, unless otherwise authorized by franchise agreement. Any such unauthorized facility shall immediately be made conforming to the regulations set forth in this Chapter. (Added by Ord. No. 2129CCS § 3 (part), adopted

7.06.050 Permit—Required.

No work shall be executed in any part of the PROW for the installation, repair or removal of any facility, or for any other purpose, without first obtaining a written permit in accordance with this Chapter. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.060 Permit—Application required.

(a) Before a permit is issued, a written application must be filed with the department on a form approved by the department. The application shall set forth the name and address of the applicant, including the name and address of the utility on behalf of which the applicant is applying for permission to excavate or otherwise locate, place or install facilities in the PROW, if this is different than the applicant; and shall state in detail the location of all proposed facilities and the extent of the excavation.

(b) No permit shall be issued under this Chapter until and unless the applicant shall have first complied with the provisions of this Code requiring the issuance of business licenses.

(c) The applicant shall show legal authority to occupy and use for the purpose mentioned in the application, the streets, alleys, sidewalks or other public places where the excavation, placement, location or installation of facilities is proposed to be made.

(d) In addition, applicants shall provide the following information:

(1) A site plan showing the exact location of the proposed facility, including other improvements in the project area;

(2) A construction plan and schedule, to include start and end dates and phasing, as required by the department.

(3) A utility study showing the location and depth of all utilities in the immediate vicinity of the facility.

(4) For wireless applications, photos, computer simulations or other accurately scaled representations of the above ground location before and after installation of all facilities. Such photos, simulations or other accurately scaled representations shall include all proposed antenna structures, antennas, and related accessory equipment, including, without limitation, all related physical structures to be placed in the PROW on any new or existing equipment or support device in order for the City to assess compliance with this Chapter.

(5) For wireless applications, certified documentation by a licensed engineer demonstrating that any proposed wireless facility will comply with the most current allowable radiation and emission standards allowed by the Federal Communications Commission for non-ionizing electromagnetic radiation (NEIR) and electromagnetic fields (EMF). The permittee shall provide an updated certified study to the City every two years. In the event that certified documentation is not submitted, the City may hire a consultant to evaluate the potential NEIR or EMF of the proposed facility. The fee charged by the consultant shall be paid by the applicant/permittee.

(6) For major wireless facility permit applications, a radius map and a certified list of the names and addresses of all property owners, as shown on the latest assessment roll of the county assessor, and commercial and residential tenants within five hundred feet of the exterior boundaries of the property involved. This list shall be in an approved mailing label format.

(7) The Director is authorized to develop, revise, and require applicants to use detailed information request forms as may be necessary to collect information useful in evaluating permit applications.

(Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.070 Permit—Fee.

(a) **Processing Fees.** Fees for any permit or application required by this Chapter shall be governed by Resolution CCS 9667 as amended from time to time, or other resolution as adopted by the City Council.

(b) **Independent Consultant.** At the discretion of the Director and as reasonably required, the applicant may be required to provide an authorization waiver to permit the City to hire an independent qualified consultant to evaluate any technical aspect of the proposed facility, including, but not limited to, compliance with applicable Federal emission standards, potential for interference with existing or planned public safety emergency emission standards, potential for interference with existing or planned public safety emergency response telecommunications facilities, or analysis of feasibility of alternate sites, screening methods or devices. Any authorization for this purpose shall include an agreement by the applicant to reimburse the City for all reasonable costs associated with the consultation. Any proprietary information disclosed to the City or the consultant is hereby deemed not to be a public record, shall remain confidential, and not be disclosed to any third party without the express consent of the applicant, except as hereafter required by operation of law or by court order. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.080 Permit—Cancellation of permit application and refunds.

Applicant shall notify the department in writing to request the cancellation of a permit application and to request any refund. Applicant will not be entitled to a refund if the request for a cancellation is filed more than two days after the permit application was filed. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.090 Permit types.

The following permit types shall apply to all work proposed by a utility in the PROW.

(a) **Excavation Permit.** An excavation permit shall be applicable when a utility proposes to perform an excavation in the PROW.

(b) **Wireless Facility Minor Permits.** A wireless facility minor permit shall be applicable when (1) a utility proposes to install a wireless facility in the PROW and (2) the proposed antenna will be placed on an existing pole and installed in such a way that it does not result in a material change to the existing pole and (3) any equipment associated with the facility, except the antenna(s), shall be substantially underground. Examples of installations which do not qualify for a minor permit include facilities which extend above the height of the existing poles in the immediate neighborhood, facilities which are installed on new poles which do not replace existing poles and facilities which include aboveground cabinet equipment. Installations which involve the replacement of an existing pole with a pole which is similar in operation and design and which otherwise meet the requirements of this section shall be eligible for a minor permit.

Utilities providing wireless services which qualify for a permit under this section will not be required to obtain a separate excavation permit for any subsurface portion of the facility.

(c) **Wireless Facility Major Permits.** A wireless facility major permit shall be applicable when (1) a utility proposes to install a wireless facility in the PROW and (2) it does not qualify for a minor permit. Examples of installations requiring a major permit include facilities which extend above the height of the existing poles in the immediate neighborhood, facilities which are installed on new poles and facilities which include aboveground cabinet equipment. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.100 Wireless major permit notice.

(a) At least fourteen days prior to rendering a decision on the wireless major permit, written notice of the application shall be sent to all property owners and residential and commercial tenants within a five-hundred-foot radius of the proposed facility. For this purpose, the last known name and address of each property owner as contained in the records of the Los Angeles County Assessor shall be used. The address of the residential and commercial tenants shall be determined by visual site inspection or other reasonable accurate means. The applicant shall provide a list of property owners and tenants within the prescribed area of notification and shall sign an affidavit verifying that the list has been prepared in accordance with the procedure outlined in this Section.

(b) In issuing the permit, the Director shall take into consideration all comments provided by the public. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.110 Excavation permit issuance.

(a) The Director shall issue an excavation permit if the Director makes all of the following findings:

- (1) The permit will not substantially interfere with pedestrian use of the PROW;
- (2) The permit will not substantially interfere with vehicular safety; and

(3) The requirements of this Chapter are met.

(b) The Director may impose conditions on the permit prior to its issuance relating to the time, place and manner of use of the PROW as set forth in this Chapter. The Director may deny an excavation permit if the application is incomplete or does not comply with the requirements of this Chapter. Such decision shall be final. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.120 Wireless minor permit issuance.

(a) Following a review of the application for a wireless minor permit, the Director shall issue a wireless minor permit if the Director makes all of the following findings:

- (1) The permit will not substantially interfere with pedestrian use of the PROW;
- (2) The permit will not substantially interfere with vehicular safety; and
- (3) The requirements of this Chapter are met.

(b) The Director may impose conditions on the permit prior to its issuance relating to the time, place and manner of use of the PROW as set forth in this Chapter. The Director may deny a wireless permit if the application is incomplete or does not comply with the requirements of this Chapter. Any denial shall be in writing and shall describe the reasons for denial. Such decision shall be final. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.130 Wireless major permit issuance.

(a) Following a review of the application for a wireless major permit and public comment, the Director shall prepare a written decision which shall contain the findings of fact upon which such decision is based. The Director may approve a wireless major permit application, in whole or in part, with or without conditions, provided all of the following findings of fact are made:

- (1) The proposed facility complies with all of the applicable provisions of this Chapter and Code.
- (2) The proposed facility will not interfere with the use of the PROW.

(3) The proposed construction plan and schedule will not unduly interfere with the public's use of the PROW.

(4) The proposed facility can be mitigated so that its impacts do not result in a material change to the character of the location and the facility relates harmoniously with the surrounding neighborhood.

(b) The Director may impose conditions on the permit prior to its issuance relating to the time, place and manner of use of the PROW as set forth in this Chapter.

(c) The Director's decision shall not become effective until fourteen consecutive calendar days after it is served upon the applicant by first class mail, unless it is stayed as provided for in the appeal section of this Chapter. For purposes of this section, service is effective five calendar days after deposit of the decision into the mail. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.140 Wireless major permit appeals.

(a) Within fourteen calendar days after service on the applicant of the notice of determination by the Director to issue or deny a major wireless permit or a telecommunications exemption application filed under this Chapter, any person may appeal the decision to the City Council. Should a timely appeal be made, issuance of the permit shall be stayed. The City Council shall review the application de novo. The decision of the City Council shall be based on the same standards as applicable to the Director. Appeals taken pursuant to this section shall be governed by the appeal provisions of Section 9.04.20.24 of this Code.

(b) If no appeal is made within the fourteen-day period, the permit shall be issued. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.150 Permit scope and duration.

(a) Upon approval by the Director, or City Council on appeal, of the application, the Director shall issue a written permit for the work.

(b) The permit shall specify the utility issued the permit, the particular portion or portions of the PROW covered by the permit, the extent of such work and its expiration date, which shall not exceed six months from the date the permit is issued. No permit shall be transferable. Every permit shall be void unless the work is commenced within forty-five days from the date of issuance of the permit.

(c) If the work is not completed prior to the permit's expiration date, the Director in his or her discretion may extend the expiration date for no more than one additional six-month period. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.160 Failure to complete work.

(a) If work is not completed by the expiration date set forth on the permit, permittee will be required to re-apply for a new permit.

(b) Nothing in this Section shall be construed to guarantee approval of a new permit. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.170 Emergency.

Nothing in this Chapter shall be construed to prevent any utility from making any emergency excavation that may be necessary for the preservation of public safety; provided, that the utility making such excavation shall file a permit application and pay all prescribed fees no later than ten days after the emergency excavation was begun. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.180 Blanket permit qualifications.

Notwithstanding this Chapter, utilities which have a franchise with the City may be granted a permit to complete service connections, to perform service alterations, to perform routine repair of underground facilities or to perform abandonments provided that any such work is less than one hundred feet in length. Work completed under this Section shall be contingent upon a traffic diversion plan approved by the Transportation Management Division. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.190 Maintaining permit at work site.

Permittee shall keep at the location of the work site a copy of the permit and must, on demand, exhibit the permit to any designated City representative. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.200 Procedure for finalizing permit.

Immediately upon completion of work, permittee must notify the department for final inspection. Nothing in this Section is intended to limit any other remedies of the City. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.210 Periodic review.

Every five years starting from the issuance of any wireless major permit, each permittee shall provide legal authority that it continues to have the right to occupy and use the PROW for the purpose set forth in its permit. Failure to submit such an affidavit or lack of legal authority to occupy or use the PROW shall be grounds for revoking a wireless major permit. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.220 Modifications to existing facilities.

The City finds that the technology associated with telecommunications equipment is subject to rapid changes and upgrades as a result of improvements in wireless technology, industry competition, and customer demands, and anticipates that improved telecommunications facilities, including, without limitation, antennas and related equipment with reduced visual impacts will be available from time to time with comparable or improved coverage and capacity capabilities. The City further finds that it is in the interest of the public health, safety, welfare, and aesthetics that telecommunications providers be required to replace older facilities with newer facilities of equal or greater capabilities and reduced visual impacts as technological improvements become available. Therefore, whenever a permittee seeks to reconstruct, modify or replace any facility permitted under this Chapter, the Director shall review the existing facility to determine whether requiring newer equipment or applying new screening techniques that further reduce visual impact is appropriate and technically feasible and, if such a finding is made, the Director, may so condition any such work. Nothing in this Section is intended to waive the permit requirements for any such work. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.230 Design standards.

To the extent permitted by law, the City shall approve the placement and design of all facilities installed on the PROW governed by the Chapter. The City shall consider the following guidelines when

approving a facility governed by this Chapter to the extent permitted by law.

(a) **Site Selection Criteria.**

(1) **Traffic Obstruction.** The placement of the facility shall not impede vehicular or pedestrian traffic flow.

(2) **Over Concentration.** Only one wireless facility and associated equipment shall be permitted every one hundred feet. Any facility which is co-located with another facility shall be exempt from this requirement.

(3) **Antenna Locations.** Wireless facilities located on existing infrastructure, such as utility poles and street light poles, shall be preferred.

(4) **Alley Preference.** Except for antennas, facilities located in alleys and near property line prolongations shall be preferred.

(5) **Exhaustion of Other Sites.** For wireless installations, as a general policy, given the limited PROW in the City, the placement of antennas on private property is preferable to the placement of antennas on the PROW. In addition, the placement of antennas in commercial areas of the City is generally preferable to the placement of antennas in residential areas of the City. Prior to placing an antenna in a PROW adjacent to a residential zone, the applicant must demonstrate that no feasible alternate locations exist within a three hundred foot radius (not including the width of the PROW) of the following: (A) private property in commercial areas of the City; (B) private property in residential areas of the City; and (C) PROW in commercial areas of the City. Prior to placing an antenna in a PROW adjacent to a non-residential zone, the applicant must demonstrate that no feasible alternate locations exist on private property in commercial areas within the coverage area of the proposed site.

(6) If the proposed location is not a preferred location, as set forth in subsections (a)(3), (4) and (5) of this Section, the applicant shall provide a list by address and Assessor's parcel number and a map of all preferred location sites within the service area; what good faith efforts and measures were taken to secure each other of these preferred location sites; describe why each such site was not technologically, legally or economically feasible and why such efforts were unsuccessful; how and why the proposed site is essential to meet service demands for the geographic service area and the citywide network. This information is necessary to determine whether there will be a significant gap in coverage if the project is not approved or whether alternatives exist for providing coverage. The City may hire a consultant to evaluate the applicant's showing and the fee charged by the consultant shall be paid by the applicant.

(b) **Visual Impact.**

(1) **Unobtrusive Design.** Facilities shall be designed to be as visually unobtrusive as possible. Applicant shall size antennas, mast arms, cabinet equipment and other facilities to minimize visual clutter. Colors and designs must be visually neutral, integrated and compatible with surrounding buildings and/or uses in the area. Facilities shall be sited to avoid or minimize obstruction of views from adjacent properties and otherwise preserve the aesthetic integrity of the PROW.

(2) **Finish Materials.** Facilities shall not be of a bright, shiny, or glare reflective finish. The facility shall be finished in a color to neutralize it and blend it with, rather than contrast it from, the sky and site improvements immediately surrounding, provided that, wherever feasible, a light color shall be used to meet this requirement.

(3) **Underground Placement.** The base station and all associated equipment including wires and cables necessary for the operation of a wireless facility shall be placed underground so that the antenna is the only portion of the facility that is above ground. If some other placement is proposed, the applicant shall demonstrate to the satisfaction of the City that it is not feasible to locate this equipment below ground. The City may hire a consultant to evaluate the applicant's submittal and the fee charged by the consultant shall be paid by the applicant.

(4) **Camouflaged Design.** Applicant shall use state of the art, well-camouflaged designs to minimize visual impact of the facility. For example, the visual impact of a facility may be

mitigated by integrating it into existing functional facilities such as street light or utility poles. The City may hire a consultant to evaluate the applicant's submittal and the fee charged by the consultant shall be paid by the applicant.

(5) **Screening.** Applicant shall screen the facility to take into account the existing improvements in the immediate area, including fencing, walls, berms, structures, painting and landscaping.

(6) **Landscaping.** New landscaping and irrigation designs shall be performed under the supervision of a licensed landscape architect in accordance with the City's landscaping standards. No faux design of any kind, including artificial landscaping materials, shall be used as part of the installation.

(c) **Antenna Requirements.**

(1) **Camouflage Requirement.** Antennas shall be camouflaged so that they do not materially change the aesthetic character of the immediate vicinity of the facility and so that they relate harmoniously with the surrounding neighborhood. Antennas shall be the smallest size currently available at the time the application is filed to perform the intended function. In general, an array of smaller antennas is preferable to one larger antenna. Antennas shall be integrated into other facilities in the PROW such as utility poles or street light poles. For example, if antennas are to be placed in a new operating street light, the new operating street light shall match the adjacent lights in spacing and design.

(2) **Horizontal Mast Arms.** Horizontal mast arms supporting pole mounted antennas shall be the minimum length permitted under General Order 95 promulgated by the Public Utilities Commission or other applicable safety laws.

(3) **Pole Height.** The maximum height of any new or replacement street light pole installed under this Chapter shall not be substantially higher than other comparable street light poles in the immediate vicinity.

(4) **City Improvements.** Antenna installations on existing City improvements shall be placed in a manner so that the size, appearance and function of the final installation is essentially identical to the installation prior to the antenna installation taking place. No faux or otherwise non-functioning street lights or artificial landscaping shall be permitted. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.240 General conditions.

All permits governed by the Chapter shall be subject to the following general conditions in Sections [7.06.250](#) through [7.06.470](#). (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.250 Compliance with applicable law and regulations.

This Chapter is not intended to be the exclusive means of regulating installation of facilities in the PROW and nothing herein is intended to waive any other applicable City requirements, including but not limited to building permit requirements, storm water runoff requirement, business license requirements and undergrounding regulations. The applicant/permittee must obtain all permits, licenses, and similar authorizations that are required by other governmental entities for the installation of its facilities. The utility must also be and remain in compliance with all applicable statutes, ordinances, rules, regulations, orders, and decisions issued by any Federal, State or local governmental body or agency, including without limitation those issued by the California Public Utilities Commission and the Federal Communications Commission. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.260 Nonexclusive use of PROW.

All permits to construct or place facilities in the PROW shall be nonexclusive. Neither the granting of an excavation or other permit under this Chapter by the City provides any permittee with an exclusive use of the PROW. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.270 Maintenance of facilities.

The applicant/permittee shall maintain all facilities installed in the PROW in a condition which maintains the safety, integrity, and aesthetics of the PROW and the facilities, including, but not limited to: all landscaping installed must be properly and regularly maintained; graffiti and posters must be removed within forty-eight hours after written notification to the permittee; and aboveground cabinets and other aboveground facilities shall not appear to be unkempt. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.280 Regulations.

To the extent not preempted by applicable laws, the Director may prescribe regulations covering the location, size and depth of excavations in public streets and sidewalks as he or she may deem necessary for the public safety and welfare. Where such regulations are general in character and are designed to apply to all excavations of a certain type or nature, they shall be promulgated in writing showing the date of their enactment, and a copy thereof, duly certified to by the Director shall be kept on file where they may be made available for public inspection upon the demand of any person. All work performed under this Chapter shall be subject to such regulations. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.290 Submittals.

Prior to the issuance of any permit, each applicant shall provide the department with evidence that it has obtained all applicable business, State permits, and other licenses, as well as insurance and performance and payment bonds in an amount and form specified by the Department. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.300 Coordination.

(a) **Coordination with Other Projects.** To the maximum extent possible and as permitted by law, an applicant shall design and schedule its work so as to coordinate its work with other persons installing, constructing, or maintaining facilities in the PROW and with the City.

(b) **Network Diagram Submission.**

(1) Commencing June 15, 2005 and each June 15th of each subsequent year, each utility with facilities in the City shall submit an updated diagram in a format acceptable to the department of all facilities owned or controlled by each such utility and located in the PROW. Such diagrams shall show, but not be limited to showing, the number, size, and locations of antennas, pipelines, conduits, cables, vaults, pedestals, and all other associated facilities located in the PROW.

(2) If a utility's facility diagram has not changed from the diagram submitted in a previous year, in lieu of submitting a new diagram, a utility may, at its election, provide an affidavit to the City certifying that the previous year's map has not changed. The certification shall also include the date that the previous map was submitted to the City.

(3) In order to ensure the security of installations, this information shall not be made a public record, except that utilities requesting a permit under this Chapter may request portions of submitted diagrams affecting their proposed installation.

(c) **Participation in Coordination Meetings.** Each utility shall participate in periodic coordination meetings as requested by the City with other utilities and affected public agencies. The purpose of these meetings shall be to coordinate activity between public works projects and utility projects in the PROW. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.310 Professional engineer requirements.

No permit shall be issued for excavation projects over one thousand lineal feet without submission of plans prepared under the direction of and stamped by a professional engineer registered in the State of California, except to the extent applicant is exempted from this requirement by [Business and Professions Code](#) 6746, 6747 or other applicable law. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.320 Monument restoration.

When monuments exist that control the location of boundaries, roads, streets or highways, or provide survey control, the monuments shall be restored pursuant to the requirements set forth in the State of California's Professional Land Surveyor's Act. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.330 Excavation requirements.

(a) **Minimum Depth of Facilities.** Except where preempted by applicable law, no permittee shall install any facilities in any PROW at a distance of less than that defined by a map maintained in the Office of the City Engineer.

(b) **Excavation Under Sidewalks.** Except for service connections, no excavation shall be made under the sidewalk or parkway between the curb line and a distance four feet from the curb line, as measured toward the property line or under any alley or court within three feet of either side of the centerline.

(c) **Limits of Excavation.** No trench shall be opened in the PROW for the purpose of laying pipes or conduits more than six hundred feet in advance of pipe or conduit installation, backfill and interim pavement construction.

(d) **Location of Excavation.** No permittee shall make any excavation to install any facility under the surface of any PROW other than that described in the approved permit. No permittee shall modify the permitted location of the excavation, except for minor variations in alignment due to interferences, unless approved ahead of time by the department.

(e) **Excavation in Recently Paved Streets.** Except in an emergency or in the case of new service connections to a newly constructed or substantially remodeled building, there shall be no excavation in streets completely resurfaced or reconstructed by the City within the preceding three years.

(f) **Backfilling.** Trench backfill shall be one of the following:

(1) Three-quarter sack sand/cement slurry. This is to be used in narrow trenches six inches wide or less.

(2) Decomposed granite mechanically compacted to ninety-five percent relative compaction in six inch lifts.

(3) Crushed miscellaneous base mechanically compacted to ninety-five percent relative

compaction in six inch lifts.

Except for base material used for subgrade under street pavement, native soil may be used for backfill, subject to verification by the Director of the competency of the soil. In those cases, the City will rely upon the analysis and recommendations of a private soils engineer hired by the utility, unless the City elects to hire its own soils engineer to verify the competency of the soil. In such case, the utility shall pay the cost of the City-hired engineer. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.340 Construction requirements.

(a) **Construction.** The utility is solely responsible for construction, installation and maintenance of its facilities. City has the right at all times to inspect construction of the facilities to assure compliance with all permits or approvals granted by City.

(b) **Standard of Care.** The utility will undertake all authorized activities within the PROW of the City in a skillful manner, consistent with the highest standards generally recognized as being employed by professionals in the same discipline in the State of California. Facility installation activities must comply with applicable Federal, State, and local laws, regulations and rules.

(c) **Public Notification.** Except in cases of blanket permits, permittee shall provide written notification to all residents and businesses located within five hundred feet, not including the width of the PROW, of planned work area seventy-two hours prior to the start of such work in a form approved by the department prior to distribution. The permittee shall ensure that the construction minimally impacts the public.

(d) **Commencement of Work.** Permittee must provide notification to the department that work will commence seventy-two hours prior to start of work.

(e) **Diligence Required.** The work shall be prosecuted with due diligence so as not to obstruct the PROW unduly. If the work is not prosecuted diligently as determined by the Director, the City will give permittee written notice to correct the condition. If permittee does not diligently prosecute the work to completion within the time frame specified by the Director, the City will restore the PROW to its preexisting condition and charge permittee for the work.

(f) **Complaint Handling Procedure.** Permittee shall have a designated community relations liaison to address public concerns related to the project. Within twenty-four hours of a complaint or the next day thereafter, the liaison shall notify the department of the date, nature, and resolution of the complaint.

Permittee shall maintain on file with the department a copy of the utility's community relations program outlining procedures for handling complaints.

(g) **Emergency Phone List.** In regard to each permit issued, permittee shall provide the department with emergency contact information to include the name and phone number of the twenty-four-hour emergency contact.

(h) **Inspection.** The permittee shall make the work site accessible to the City, and others authorized by law, for inspection at all times during performance of work under this Chapter.

(i) **Temporary Pavement Surface and Steel Plates.**

(1) When directed by the department, the permittee shall install steel plates with non-slip surface to bridge any excavation in the PROW during non-working hours. Such plates shall be anchored so as to minimize movement.

(2) Backfilled excavations in streets shall be maintained for vehicular and pedestrian traffic by surfacing the trench with a temporary pavement according to department standards.

(j) **Vehicle and Pedestrian Crossings.**

(1) It shall be the duty of every permittee performing any work in any public street to maintain safe crossings for vehicular traffic and to ensure compliance with paths of travel for disabled persons, including crossings for pedestrians at intervals of not more than six hundred feet, in accordance with all applicable laws, including the Americans with Disabilities Act (ADA). Fire hydrants, water and gas main shut-off valves, traffic signal control boxes, and electrical and water meters must remain accessible at all times.

(2) It shall be the duty of every permittee performing any work in any PROW to maintain signage and delineation throughout the area of the work as may be necessary to prevent accident and injury. In addition, if in the determination of the department, the nature or location of such excavation requires lighting to prevent injury or accidents, such lights must be placed at locations specified by the department.

(k) **Job Site Cleanliness.** The work of removing from the PROW all excavated material and construction debris is the responsibility of the permittee. Removal and disposal must occur within eight hours of deposit in accordance with Chapter [7.60](#). If permittee fails to maintain the cleanliness of the site, the permit is subject to revocation as outlined in Section [7.06.490](#).

(l) **Protection of Urban Forest.** The permittee shall retain, at its own cost, a certified arborist to advise the permittee's contractor doing underground work in the PROW as to appropriate locations for underground vaults, conduits and other equipment and root pruning techniques, if needed, so as to ensure minimal impact to existing trees and other landscaping materials that are a part of the City's urban forest. The permittee's arborist shall coordinate their work with the City's Community Forester.

(m) **Excavation Backfill Compaction Testing.** When requested by the City, the permittee shall perform backfill compaction testing by a qualified testing laboratory and furnish copies of written reports to the City. The City reserves the right to perform backfill compaction testing in conjunction with the permittee's construction activities. The permittee must ensure proper compaction prior to paving as required by the department. If slurry is used for backfill, compaction testing shall not be required.

(n) **Construction As-Built Submission.** For each permit completed, permittee shall submit an as-built set of drawings to the department within sixty days of completion of work. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.350 Insurance.

Prior to commencing work, the permittee shall secure the following types and amounts of insurance:

(a) **Minimum Limits of Insurance.** Permittee shall obtain insurance of the types and in the amounts described below:

(1)(A) **Commercial General Liability Insurance (for projects one thousand linear feet or less).** Permittee shall maintain commercial general liability (CGL) with a limit of not less than one million dollars each occurrence/two million dollars in the annual aggregate.

(B) **Commercial General Liability Insurance (for projects greater than one thousand linear feet).** Permittee shall maintain commercial general liability (CGL) with a limit of not less than three million dollars each occurrence/three million dollars in the annual aggregate.

(C) **Business Auto Liability Insurance.** Permittee shall maintain business auto liability with a limit of not less than one million dollars each accident.

(2) These amounts may be increased or decreased by the Risk Manager upon a showing of special circumstances relating to risk to public property, public improvements or public safety. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.360 Minimum scope of insurance.

(a) CGL insurance shall be written on Insurance Services Office form CG 00 01 (or a substitute form providing equivalent coverage) and shall cover liability arising from or in connection with permitted activity.

(b) Business auto insurance shall cover liability arising out of any auto, including owned, hired, and non-owned autos. Coverage shall be written on Insurance Services Office form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.370 Other insurance provisions.

(a) The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions: City of Santa Monica, its officers, officials, employees, and volunteers are to be covered as additional insureds with respect to liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of the permittee; and with respect to liability arising out of work or operations performed by or on behalf of the permittee including materials, parts or equipment furnished in connection with such work or operations.

(b) Under the CGL policy or commercial umbrella policy, the Insurance Services Office additional insured endorsement form CG 20 10 or a substitute providing equivalent coverage shall be used. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.380 All coverages.

Each insurance required by this clause shall be endorsed to state that coverage shall not be canceled except after thirty days prior written notice by certified mail, return receipt requested, has been given to the City, attention City Engineer.

(b) If permittee is self-insured for any of the required coverages, permittee shall provide to City's Risk Manager written certification as provided by either permittee's risk management professional, independent insurance consultant or actuary, or a licensed insurance broker that permittee has sufficient assets to provide coverage as required in Section [7.06.350](#). (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.390 Verification of coverage.

Permittee shall furnish the City of Santa Monica with original certificates and copies of amendatory endorsements effecting coverage required by Section [7.06.350](#). The certificates and endorsements for each policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. The certificates and endorsements should be on forms provided by the City of Santa Monica or on other than the City of Santa Monica's forms, provided those forms and endorsements conform to the requirements. All certificates and endorsements are to be received and approved by the City of Santa Monica before work commences. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.400 Contractors and subcontractors.

Permittee shall include all contractors and subcontractors as additional insureds under its policies or shall ensure that all contractors and subcontractors meet all of the requirements stated herein. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.410 Indemnity.

The permittee shall defend, indemnify, and hold harmless the City of Santa Monica, its Council, boards, commissions, officers, agents, volunteers, and employees from and against any and all loss, damages, liability, claims, suits, costs and expenses, whatsoever, including reasonable attorney's fees, regardless of the merit or outcome of any such claim or suit, resulting from the alleged acts or omissions of permittee, its officers, agents, or employees in connection with the permitted work. Nothing contained herein shall be construed as obligating permittee to indemnify City for losses resulting from its sole or active negligence or willful misconduct. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.420 Warranty.

The utility warrants that any trench backfill, pavement restoration, or other work performed by the utility or its employees, agents, and contractors in the public rights-of-way will be free from all defects due to faulty materials or quality of work for a period of five years after the date of installation of the facilities. The utility will repair or remove and replace all such backfill, pavement restoration, or other work, together with any other pavement areas directly affected by that removal or replacement, without any expense to City. If the utility fails to comply diligently with those provisions within ten days after being notified in writing (or in cases of emergency, within twenty-four hours), City is authorized to proceed to have any backfill, pavement restoration, or other defects remedied at the sole cost and expense of the utility, and the utility is obligated to pay those costs and expenses within thirty days of receipt of invoice. Such action by the City will not relieve the utility of the warranty provided for in this Section. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.430 Cash bond or surety bond.

Notwithstanding any other provisions of this Code, whenever the Director or the Building Officer determines that any work proposed to be performed under any permit issued by the Director or the Building Officer might endanger any adjoining property, he or she may require, as a condition precedent to the issuance of such permit, that there be provided a cash bond or a surety bond by an authorized surety company acceptable and approved by the Risk Manager in the substance and form acceptable to and approved by the City Attorney. Such bond shall be in a penal sum prescribed by the Director or the Building Officer conditioned upon the repair, in the manner directed by and strictly in accordance with the requirements of the Director, of any and all damage (1) to private property (other than utilities) which in the opinion of the Director or Building Officer was wholly or partially caused as a direct or indirect result of any work under such permit, and (2) to public ways, other public property, substructures and utilities, which in the opinion of the Director or Building Officer was wholly or partially caused as the direct or indirect result of any work under such permit, or alternatively the payment of the cost of any such repairs, made by the City or owner of any utility, or both. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.440 Hazardous materials.

Permittee shall comply with all Federal, State, County, and local laws regarding hazardous material, including, but not limited to, all rules and regulations concerning the storage, handling and disposal of hazardous material. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.450 Water/storm water runoff mitigation.

The permittee shall prevent all non-storm water discharge from the construction site from entering the storm drain system in accordance with Section [7.10.060](#) et seq. of the Municipal Code. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.460 Facility marking requirements.

Upon completion of the work, permittee shall identify the completed project with a marker no less than one inch in diameter and embedded a minimum of two and one-half inches into the pavement or sidewalk. The marker shall be permanently imprinted with the letter “G” for natural gas lines, “E” for electric power lines, “T” for telecommunications companies, or “C” for cable television companies. The Director shall develop other marker symbols as necessary and appropriate. Markers shall be placed at intervals of no more than every sixty feet. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.470 Duty to remove facilities from PROW.

(a) The City may order a utility to remove or relocate its facilities from the PROW at the utility's own expense when the facility interferes with the City's use of the PROW, or when the utility abandons the facilities.

(b) If not removed voluntarily by the utility, then the City may notify such utility that should removal of the facility not be

accomplished within a reasonable time specified by the City, the City may direct its officials or representatives to remove such facilities at that utility's expense.

(c) If the City removes the facilities and utility does not claim the property within sixty days of its removal, then the City may take whatever steps are available under the law to declare the property abandoned or surplus, and sell it, with the proceeds of such sale going to the City as permitted by law.

(d) When a utility removes its facilities from the PROW located within the City, the utility shall at its own expense, and in the manner prescribed by the City, replace and restore such PROW in accordance with repair standards adopted by the department. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.480 Permit non-compliance—No waivers.

No permittee shall be excused from complying with any of the provisions of this Chapter by any failure of the City on any one or more occasions to seek, or insist upon, compliance with any requirements or provisions of this Code. Regardless of the City's failure to seek compliance on any occasions, such action shall not be considered a waiver of any requirements of this Code. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.490 Permit revocation.

The City may revoke a permit or any other right to use the PROW issued under this Chapter for any of the following reasons:

- (a) Failure to comply with any condition of a permit issued,
- (b) Failure to comply with this Chapter;
- (c) A substantive change of law affecting a utility's authority to occupy or use the PROW or the City's ability to impose regulations relating to such occupation or use;

- (d) A facility's interference with a City project;
- (e) A facility's interference with vehicular or pedestrian use of the PROW;
- (f) Failure to make a safe and timely restoration of the PROW. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.500 Appeal of permit revocation.

A permittee whose permit or right has been revoked may have the revocation reviewed, upon written appeal as follows:

(a) Within fourteen days of the revocation, a written appeal shall be filed with the Director. The appeal must contain a statement of any reasons why the permittee believes that the revocation should be reviewed. The Director shall render a decision within twenty-one days of receipt.

(b) If the Director denies the appeal, the permittee may file a written notice of appeal with the City Council within twenty-one days of notification of the appeal denial. In addition to containing a statement of any significant factors and/or hardships as well as alternatives explored, the appeal must contain a response to the findings of the Director that resulted in the denial. The appeal shall be conducted in accordance with the procedures governing wireless major permit appeals. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.510 Additional wireless facility requirements.

The wireless facilities in the PROW shall be subject to the following additional requirements.

(a) **Abandonment.** Whenever a wireless provider intends to discontinue use of its wireless facility the provider must notify the City Engineer in writing of its planned abandonment of the wireless facility. Wireless facility shall be removed within thirty days of abandonment. Any wireless facility not in use for a period of six months shall be considered abandoned and shall be removed pursuant to this Chapter.

(b) **Provisions for Underground Utility Districts.** If a wireless facility is placed on a utility pole or other structure that is located within a new underground utility district adopted by resolution of the City Council, the wireless facility must be removed from the PROW at the utility's expense. Replacement of the wireless facility is subject to this code. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.520 Exemption procedures.

A utility may apply to the Director for an exemption from any of the requirements of this Chapter in accordance with this Section.

(a) **Hardship Exemption.**

(1) A utility may apply to the Director for an exemption from any of the requirements of this Chapter on the grounds that such requirement (A) is not feasible or (B) constitutes an undue hardship.

(2) An application shall include information necessary for the City to make its decision, including but not limited to reports or studies showing the factual support for the claimed exemption. The Director may require the utility to provide additional information to permit the Director to determine facts regarding the hardship exemption application.

(3) Following a review of the application, the Director may approve the exemption, in whole or in part, with or without conditions, provided all of the following findings of fact are made:

- (A) The subject requirement is not feasible or constitutes an undue hardship;
- (B) The work will not substantially interfere with pedestrian use of the PROW;

- (C) The work will not substantially interfere with vehicular safety;
- (D) The facility will serve a community benefit;
- (E) The requirements of this Chapter are met, except for the requirement sought to be waived; and
- (F) The proposed facility can be mitigated so that its impacts do not result in a material change to the character of the location and relate harmoniously with the surrounding neighborhood.

(4) The Director's decision shall become effective immediately. The Director's decision is final and shall not be appealable.

(b) Telecommunications Exemption.

(1) A wireless utility may apply to the Director for an exemption from any of the requirements of this Chapter on the grounds that such requirement constitutes a prohibition pursuant to Section 253(a) of the Telecommunication Act of 1996 (as may be amended), or other law.

(2) An application shall include information necessary for the City to make its decision, including but not limited to reports or studies showing the factual support for the claimed exemption. The Director may require the wireless utility to provide additional information to permit the Director to determine facts regarding the telecommunications exemption application.

(3) In addition, the application shall include a radius map and a certified list of the names and addresses of all property owners, as shown on the latest assessment roll of the county assessor, and commercial and residential tenants within five hundred feet of the exterior boundaries of the property involved. This list shall be in an approved mailing label format.

(4) Such waiver request shall be subject to a hearing by the Director. Following a review of the application and hearing, the Director shall prepare a written decision which shall contain the findings of fact upon which such decision is based. Such decision shall be issued within thirty days of the hearing. The Director may approve the exemption, in whole or in part, with or without conditions, provided all of the following findings of fact are made:

(A) The subject requirement constitutes a prohibition pursuant to Section 253(a) of the Telecommunication Act of 1996 (as may be amended), or other law.

(B) There are special circumstances or exceptional characteristics applicable to the facility or the proposed location, including size, shape, topography, location, or surroundings, or to the intended use or development of the property that do not apply to other properties in the vicinity containing similar facilities.

(C) The proposed facility complies with all of the applicable provisions of this Chapter and Code, except for the requirement subject of the waiver request.

(D) The proposed facility will not interfere with the use of the PROW.

(E) The proposed facility can be mitigated so that its impacts do not result in a material change to the character of the location and relate harmoniously with the surrounding neighborhood.

(5) The Director's decision shall not become effective until fourteen consecutive calendar days after it is served by first class mail upon the applicant, unless it is stayed as provided for in the appeal section of this Chapter. The Director's decision is appealable to the City Council by any person in accordance with the appeal provision of this Chapter. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.530 Reservation of rights.

(a) **General Reservation.** By granting a permit under the terms of this Chapter, the City does not waive any rights reserved to the City under any applicable law, including [Public Utilities Code](#) Sections 7901 and 7901.1 et seq., including but not limited to the City's right to regulate the time, place, and manner of a utility's access to the City's PROW. The City also does not waive any rights reserved to the

City under the Telecommunications Act of 1996, including, but not limited to, those rights set forth in Section 253 (c) et seq. of the Act reserving to cities the right to manage the City's PROW and to require fair and reasonable compensation from utility providers on a competitively neutral and nondiscriminatory basis for the use of public rights-of-way on a nondiscriminatory basis if the compensation required is publicly disclosed by the City.

(b) **No Express Authorization to Place Utility on City-Owned Facility.** Further, nothing in this Chapter shall be construed as granting any right, whether express or implied, to any utility to place a facility on City-owned property. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.540 Future changes in the law.

The City's rights under this Chapter are coextensive with the City's rights under current State law with regard to the use of the PROW by telecommunication corporations (as defined by the [Public Utilities Code](#)). If future changes to State or Federal law authorize the City to regulate the utility and its activities within the City and the public rights-of-way to a greater degree than is now authorized by this Chapter, nothing in this Chapter will be deemed to limit, restrict in any way, or to modify the City's exercise of that regulatory authority. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)

7.06.550 Applicability of franchise agreements.

The City recognizes that in some cases a utility's local franchise agreement and/or applicable federal or state laws may take precedence over this Chapter. The City also recognizes that the local franchise agreements generally require compliance with the Santa Monica Municipal Code. In the case of a conflict between a franchise provision, a Federal law or a State law, on the one hand, and a provision of this Chapter, on the other hand, each situation will require a case-by-case analysis to determine the applicable requirement. (Added by Ord. No. 2129CCS § 3 (part), adopted 7/13/04)